



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2004

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2004-7713

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208707.

The City of Longview (the "city") received a request for personnel and disciplinary records pertaining to a named former city police officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that the submitted information includes medical records, access to which is governed by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the medical records in the submitted documents that may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

You contend that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The information you seek to withhold under section 58.007 consists of an internal affairs investigation concerning the named officer's handling of a criminal investigation involving a juvenile suspect. Upon review, we find the internal affairs investigation contains a juvenile law enforcement record that pertains to conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply to this record; thus, we determine that the juvenile law enforcement record we have marked in the internal affairs investigation documents at issue is confidential under section 58.007(c) and must be withheld pursuant to section 552.101 of the Government Code. The remainder of the internal affairs investigation documents, however, are not juvenile law enforcement records and may not be withheld under section 552.101 in conjunction with section 58.007(c).

Next, you have marked information that you contend is confidential under section 771.061 of the Health and Safety Code. Section 771.061(a) makes confidential certain information that telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. *See generally* Open Records Decision No. 661 (1999). We understand you to represent that the city operates a computerized 9-1-1 service. Provided that the city does in fact operate a computerized 9-1-1 service, and to the extent that the submitted information was required to be furnished to the city by a telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, we agree that the information you have marked is confidential under section 771.061 and must be withheld under section 552.101. *See id.* If the city does not operate a computerized 9-1-1 service, or if it does operate such a service but the information at issue was not required to be furnished to the city by a telecommunications service provider and is not contained in an address database used in providing computerized 9-1-1 service, then the information at issue is not excepted from disclosure under section 552.101 in conjunction with section 771.061.

Next, criminal history record information ("CHRI") is confidential and not subject to disclosure. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2)(B). The city must withhold any CHRI falling within the ambit of these state and federal regulations pursuant to section 552.101 of the Government Code.

We also note that a portion of the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 411.192 of the Government Code, which governs the release of all information maintained by DPS concerning the licensure of individuals to carry a concealed handgun. Section 411.192 provides:

[DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. [DPS] shall, on written request and payment of a reasonable fee to cover costs of copying, disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this

subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552, Government Code, except that the applicant or license holder may be furnished a copy of disclosable records on request and the payment of a reasonable fee.

Gov't Code § 411.192. You have marked information in the submitted documents concerning an individual's concealed handgun license. We agree that the city must withhold this information pursuant to section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

You indicate that the submitted documents include a motor vehicle accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Upon review, however, we note that the document you seek to withhold pursuant to section 550.064 is not an accident report governed by subchapter D of chapter 550 of the Transportation Code. *See* Transp. Code §§ 550.001-.068. We therefore determine that this document is not confidential under section 550.065(b) and may not be withheld under section 552.101 on that basis.

We note that section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, specific illnesses, procedures, and physical disabilities). We have marked a small amount of information in the submitted documents that is protected by common-law privacy and must be withheld under section 552.101.

You have marked information that you contend is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from required public disclosure the home address, home telephone number, social security number, and the

family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). We agree that the information you have marked under section 552.117(a)(2) is excepted from disclosure and must be withheld. We have also marked additional information in the submitted documents that the city must withhold pursuant to section 552.117(a)(2) of the Government Code.

The submitted documents also contain information that is excepted from disclosure under section 552.130 of the Government Code, which provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. The city must withhold the marked Texas motor vehicle driver's license, title, and registration information pursuant to section 552.130 of the Government Code.

Finally, we note that the submitted information contains social security numbers of members of the public. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we have marked medical records in the submitted documents that may be released only as provided under the MPA. We have marked a portion of the submitted information that is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. Provided the city operates a computerized 9-1-1 service, and to the extent that the address and telephone number you have marked was required to be furnished to the city by a telecommunications service

provider or is contained in an address database used in providing computerized 9-1-1 service, we agree that the address and telephone number you have marked in the submitted documents are confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101. Otherwise, this information is not excepted from disclosure and must be released. Any criminal history record information in the submitted documents must be withheld pursuant to section 552.101 in conjunction with chapter 411 of the Government Code and federal regulations. The city must withhold the information you have marked in the submitted documents pertaining to a concealed handgun license pursuant to section 552.101 in conjunction with section 411.192 of the Government Code. We have marked information that must be withheld under section 552.101 in conjunction with common-law privacy. The remaining marked information must be withheld pursuant to section 552.117(a)(2) of the Government Code, and section 552.130 of the Government Code. Social security numbers of members of the public may be excepted under section 552.101 in conjunction with federal law. The remainder of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 208707

Enc: Submitted documents

c: Mr. John Lynch
Longview News-Journal
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(w/o enclosures)